

Appln. No. 09/785,700
Amendment dated Sep. 1, 2005
Reply to Final Office Action of June 27, 2005
Docket No. 6169-156

IBM Docket No. BOC9-2000-0017

REMARKS/ARGUMENTS

These remarks are made in response to the Final Office Action of June 27, 2005 (Office Action).

In paragraph 3 of the Office Action, the Examiner has rejected claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,055,573 to Gardenswartz, *et al.* (hereinafter Gardenswartz) in view of U.S. Patent No. 6,611,811 to Deaton, *et al.* (hereinafter Deaton).

Claims 4, 15, and 19 have been amended to correct a minor typographical error in each. The amendments are supported in the Specification and do not introduce new matter.

It may be useful to briefly reiterate certain features of Applicants' invention prior to addressing the individual claims in the context of the cited references. Applicants' invention is directed to methods and systems for stimulating commerce. The invention enables merchants to identify consumers in need of particular products rather than merely identifying consumers that have only a known or inferred preference for a product generally. Moreover, the invention enables consumers to be identified based on a merchant request and/or a business necessity, such as an excess of product inventory, a revenue shortfall, or the introduction of a new or enhanced product. The following addresses each of the claims in the order and groupings in which they are addressed in the Office Action.

Claims 1, 11, 12, and 16

Claim 1 recites a method to stimulate commerce by providing promotional material to consumers. Claims 11 and 12, which depend from Claim 10, are similar to Claim 1 in that each recites a system for providing promotional material to consumers. Claim 16 is similar to Claim 1 in that it recites computer instructions for providing promotional material, the instructions being embodied in a machine-readable storage.

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The method of Claim 1, more particularly, includes generating a merchant request in a merchant computer system in order to stimulate commerce for at least one merchant-specified product. The method further includes establishing a computer communications session between the merchant computer system and a third-party remote shopping stimulation system. During the computer communications session, a merchant request to stimulate commerce is conveyed to the third-party remote shopping stimulation system.

According to the method, the third-party remote shopping stimulation system reads consumer purchase information from the merchant computer system. The consumer purchase information comprises consumer identifying information as well as product information. One or more potential consumers of the at least one merchant-specified product is identified based at least in part on the consumer purchase information

Additionally, the method includes associating the promotional material corresponding to the at least one merchant-specified product with identified consumers, the identifying occurring in the third-party remote shopping stimulation system. The method further includes making the promotional material available to the identified consumers using a promotional material delivery system.

As already noted, Claims 1, 11, 12 and 16 were rejected as being unpatentable over Gardenswartz in view of Deaton. Gardenswartz is directed to the delivery of a targeted advertisement. (Col. 2, line 58 – Col. 3, line 4; Abstract.) The delivery includes receiving, in a computer, an identifier such as a "cookie," and delivering the advertisement in response thereto. (Col. 3, lines 19 – 26; Abstract.) More particularly, the targeted advertisement is based on an observed "offline purchase history" relating to a consumer associated with the identifier. (Col. 3, lines 46 – 51; Abstract.) More fundamentally, the intent of Gardenswartz is to deliver a promotional incentive to a consumer so as to prompt the consumer to "comply with a particular behavioral pattern," which can be either a predefined change in "established purchase behavior" or a

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continuation of the established purchase behavior. (Abstract; See also Col. 14, lines 51-55.)

Deaton is directed to a customer promotion method that is primarily directed to a single store's or single retail chain's particular customers. (See, e.g., Col. 1, line 52 – Col. 2, line 18.) Deaton's method of customer promotion centers around providing a "marginal discount" on each item selected by a customer if the accumulated price of the products selected exceeds a predetermined threshold. (Col. 1, lines 57 – 61; Abstract.)

With respect to Claims 1, 11, 12, and 16, Applicants respectfully maintain that neither Gardenswartz nor Deaton, singly or jointly, suggest each of the claims' recited features. For example, the references do not teach or suggest establishing a computer communications session between a merchant computer system and third-party shopping stimulation system in which a merchant request is conveyed to the third-party system. The cited portion of Gardenswartz instead speaks to delivering targeted advertising to a consumer's home computer. (Col. 14, lines 25-50.) What Gardenswartz describes is a kind of direct advertising, albeit of a type effected over a data communications network, independent of direct merchant participation. This is precisely the opposite of Applicants' establishing between a merchant-directed system and a separate third-party stimulation system a link over which a merchant-instigated request is conveyed, as recited in Claims 1, 11, 12, and 16.

Although Gardenswartz allows for retail outlets to provide "purchase information" to a "registration server" from which such advertisements might emanate, there is no suggestion of establishing a link between a merchant-directed system and third-party stimulation system. (See also Col. 3, lines 30-60; Col. 7, lines 54-67.) More fundamentally, the direct-marketed targeted advertising of Gardenswartz is clearly not instigated by or otherwise related to a merchant request, let alone one conveyed to a third-party stimulation system during a computer communications session, as also recited in Claims 1, 11, 12, and 16. Instead, the targeted advertising of Gardenswartz is initiated

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independently of a merchant-directed request. The merchant's only role in Gardenswartz is to provide "purchase information," the quid pro quo being that the merchant's name "is mentioned in the targeted advertisements delivered to the consumer." (Col. 14, lines 29-33.) This, again, is not remotely related to the merchant-initiated request conveyed over a link between the merchant's system and a third-party stimulation system established during a computer communications session.

The references similarly fail to teach or suggest a third-party remote shopping stimulation system reading consumer purchase information from a merchant computer system, wherein the consumer purchase information comprises consumer identifying information and product information. Firstly, nothing in Gardenswartz suggests a third-party remote shopping simulation system reading any information from a merchant's computer, let alone consumer purchase information from the merchant system. Moreover, as already noted Gardenswartz, fails to suggest establishing a merchant-third-party link that would permit Gardenswartz's "registration server" to read such information. Lastly, as explicitly described in the cited portion of the reference, the information is not read from a merchant's computer system in response to a merchant-instigated request, but rather from a database accessed by an "analytic unit" independent of the merchant or any request from the merchant. (See Col. 13, lines 12-50.)

As previously noted, Gardenswartz only alludes to a merchant contribution, stating merely that "retail locations, such as stores that are willing to provide purchase data to a purchase history database, are rewarded by having their stores' names explicitly mentioned in the targeted advertisements that are delivered to the consumer." Col. 14, lines 30-34.) This, however, does not suggest that a third-party system reads consumer purchase information from a merchant consumer system, let alone that such is related to a merchant initiated-request to stimulate commerce for a merchant-specified product, as recited in Claims 1, 11, 12 and 16.

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Gardenswartz additionally fails to suggest identifying a potential consumer of a merchant-specified product based on the consumer purchase information read from the merchant system. Gardenswartz further fails to suggest associating with the identified consumer promotional material corresponding to merchant-specified product. In the cited portion of the reference, Gardenswartz instead speaks to identifying consumers on the basis of a "value contract." (Col. 15, lines 5-54.) As explicitly described by Gardenswartz, the value contract is a device for inducing consumers to reveal themselves as potential targets of promotional effort. Specifically, the value contract provides for a marginal discount on each purchased item provided the aggregate value of a consumer's purchase exceeds a designated threshold. A consumer's "progress toward fulfilling the value contract" is tracked. (Col. 15, lines 55-65.) Accordingly, it is the consumer, neither a merchant-instigated request nor purchase data read from the merchant's computer system by the third-party shopping stimulation system, that determines who should be targeted. This mechanism by which a consumer identifies himself or herself to be a potential target for promotional effort is directly counter to the features recited in Claims 1, 11, 12, and 16.

Gardenswartz's mechanism of identification through self selection and revealed preference, moreover, precludes Gardenswartz's suggesting another feature recited in the claims, namely, that of making promotional material available to consumers who have been identified on the basis of information read from a merchant's computer system, as recited in Claims 1 and 16. As explicitly described, Gardenswartz instead relies on the delivery of value contracts to "eligible consumers." (Col. 15, lines 41-55.) The value contracts, as already noted, are intended to induce consumers to reveal their potential as targeted customers. But this mechanism of Gardenswartz's suggests none of the features recited in the claims.

It is noted in the Office Action that Gardenswartz fails to teach or suggest a merchant computer system that generates a merchant request to stimulate commerce for

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at least one merchant-specified product. It is asserted, however, that this feature is found in the companion reference, Deaton. The cited portion of Deaton is directed to an in-store, joint retailer-manufacturer marketing plan. Specifically, Deaton discloses that a pharmacy retailer and a food manufacturer, by "combining forces," undertake to "incent someone who is infrequent to a department of the store." (Col. 101, lines 28-37.) Deaton states that this arrangement provides for "cost sharing between the retailer and the manufacturer." But this has nothing to do with generating a merchant request in a merchant computer system or conveying the request during a communication session between the merchant computer system and remote shopping stimulation system, as recited in Claims 1, 11, 12, and 16.

Applicants, therefore, respectfully submit that whereas Gardenswartz and Deaton, individually and jointly, fail to teach or suggest the features recited in independent Claims 1, 11, 12, and 16, the claims necessarily define over the prior art. Applicants further respectfully assert that, whereas the remaining claims each depend from one of these independent claims while reciting additional features, the dependent claims also define over the prior art. Nonetheless, the following addresses each of the remaining claims in the context of the cited references. These claims also are addressed in the order and groupings in which they are addressed in the Office Action.

Claims 2 and 17

Each of Claims 2 and 17 recites determining a product consumption rate from consumer purchase information to identify a potential consumer of a merchant-specified product, the product consumption rate being used to determine that a previously purchased product is due to be replaced or upgraded. Applicants respectfully maintain that neither Gardenswartz nor Deaton suggest this additional feature.

Deaton, as noted in the Office Action, is intended to provide "a more sophisticated embellishment" of the concept of tracking buying patterns by tracking the consumption

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rates for individuals or households based on the use of a consumer ID. (Col. 100, line 47 – Col. 101, line 13.) There is no suggestion in Deaton, however, that consumption tracking is performed in the context of either a merchant computer system generating a merchant request to stimulate commerce or a third-party remote shopping stimulation system reading consumer purchase information from the merchant computer system. Moreover, when Deaton is combined with Gardenswartz, Deaton's customer ID tracking can produce a counter-productive result that is avoided with Applicants' invention.

The result stems from Gardenswartz's treating on-line and off-line consumer purchasing as typically unrelated events. (See, e.g., 2, lines 44-48.) Accordingly, Gardenswartz targets advertising based on observing an offline purchase history of a consumer. (Col. 3, lines 15-17.) Gardenswartz's dismissal of a consumer's on-line shopping history means that when Gardenswartz is combined with Deaton, the combination is likely to miscalculate the consumption rate of consumers who purchase both on-line and off-line, with the result that the wrong incentives can be delivered or the incentives may be delivered at the wrong time. By coupling a merchant computer system generating a merchant request to stimulate commerce with a third-party remote shopping stimulation system that reads consumer purchase information from the merchant computer system, this problem of delivering promotional material based on product consumption rates can be avoided. Applicants respectfully maintain, therefore, that this feature is not taught or suggested by the combination of Gardenswartz and Deaton, and that Claims 2 and 17 define over the prior art.

Claims 3, 13, and 18

Claims 3, 13, and 18 specifically recite that delivered promotional material and consumer purchase information include person-to-person transactions as well as Internet-based transactions. Gardenswartz speaks to delivery of targeted advertisements to a consumer's Web browser or via an interactive voice response (IVR) over the telephone.

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(Col. 2, lines 20-30; Col. 9, lines 25-40.) In a literal sense, neither of these involve person-to-person interactions. But more importantly, even were a consumer's interaction with a recorded telephone prompt treated as a person-to-person transaction, the context of Gardenswartz must be borne in mind. As already noted, Gardenswartz dichotomizes on-line and off-line transactions, stating that one typically has little or no relation with the other in terms of consumer purchasing behavior.

One reason this dichotomy is particularly important is that Gardenswartz fails to suggest linking a merchant computer system generating a merchant request to stimulate commerce with a third-party remote shopping stimulation system that reads consumer purchase information from the merchant computer system, which is part of Claims 3, 13, and 18 by virtue of the features recited in the base claims from which each depends. This arrangement of Applicants' invention provides the necessary link missing in Gardenswartz that would otherwise permit jointly considering Internet-based as well as person-to-person information and delivery of promotional material. Accordingly, Applicants respectfully maintain that these features are not taught or suggested by either Gardenswartz or Deaton, and that Claims 3, 13, and 18 thus define over the prior art.

Claims 4, 10, 14, 15, and 19

Claims 4, 10, 14, 15, and 19 recite the expending of promotional effort in response to a merchant system detecting a business necessity, wherein the business necessity can be a merchant's confronting an excess inventory and/or experiencing a revenue shortfall. Applicants respectfully maintain that this feature is not found in either Gardenswartz or Deaton.

In a portion cited in the Office Action, Gardenswartz describes the use of value contracts. As discussed above, Gardenswartz describes the value contract as a promotional incentive in which a consumer is offered a reward for complying with a particular behavioral pattern. (Col. 14, lines 51-55.) In this sense, the promotional

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incentive is instigated not in response to a merchant system, but by the consumer himself or herself. Gardenswartz's value contract is certainly intended to induce a certain behavioral response – increased purchasing – but this is true of any promotional effort. In the present context, what is important is that the value contract bears no relation to the detecting of a business necessity, let alone detecting such necessity in a merchant system as recited in Claims 4, 10, 14, 15, and 19.

Deaton likewise fails to suggest detecting a business necessity in a merchant system. In a portion cited in the Office Action, Deaton describes not the detecting of a business necessity in a merchant system, but a joining of "forces" of manufacturer and a retailer to "go after a common customer." (Col. 101, lines 31-37.) The explicit motive of each is to "reduce costs" and enhance "the value of the incentive" offered to a customer to increase the customer's patronage of both. (Col. 101, lines 45-47.) Deaton does not suggest any business necessity as a motive, either in terms of either an excess inventory or revenue shortfall. More fundamentally, Deaton is entirely silent not only as to determining a business necessity but as to determining a business necessity in a merchant system, as recited in Claims 4, 10, 14, 15, and 19. Applicants respectfully submit, therefore, that the combination of Gardenswartz and Deaton fails to teach or suggest this feature, and that Claims 4, 10, 14, 15, and 19 define over the prior art.

Claims 5 and 20

Claims 5 and 20 recite that consumer purchase information is read from a purchase history database comprising consumer purchase information for different merchants, and that the third-party remote shopping stimulation system responds to merchant requests from each of the different merchants. As already noted the references fail to teach or suggest attributes of the base claims from which Claims 5 and 20 depend, such as a merchant computer system linked during a computer communications session to a separate third-party shopping stimulation system that reads consumer purchase

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information from the merchant computer system. Moreover, as also noted in the Office Action, Gardenswartz fails to teach that a third-party remote shopping stimulation system responds to merchant requests from different merchants. Applicants respectfully maintain that this feature is not found in Deaton either.

More fundamentally in the specific context of Claims 5 and 20, Applicants' invention enables each individual merchant to submit a request and receive a specific response from a third-party remote shopping stimulation system, which responds to merchant requests from different merchants. The asserted combination of Gardenswartz and Deaton produces a different result.

The suggested scenario provided in Deaton, which is cited as providing the feature lacking in Gardenswartz, results merely in a manufacturer and retailer being lead into a coalition to share the costs of promotion, as already pointed out. There is not a single response from a third-party remote shopping stimulation system, as recited in the claims. Instead, at least by implication, the manufacturer and retailer in Deaton's scenario are forced to engage in a round of negotiation over which costs, or portion of costs, should be borne by which of the two, how customers should be targeted, and myriad other issues that arise out of such a scenario. The suggested scenario also implies that the manufacturer and retailer, to effect the joint promotional effort, are inevitably entangled together in a common promotional scheme, the result of which ultimately depends on each of the participants being able to monitor the other's compliance and accurately anticipate the costs that are to be shared. This is an entirely different result than that effected by Applicants' invention.

Applicants respectfully submit that none of the features recited in Claims 5 and 20 are taught or suggested by Gardenswartz or Deaton, individually or in combination. Applicant's respectfully maintain, therefore, that Claims 5 and 20 define over the prior art.

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Claims 7 and 22

Claims 7 and 22 expressly recite that product information can encompass product expiration information and product identifying information, so that the identifying of a potential consumer of a merchant's product can be based upon the expiration information of the product. Applicants respectfully maintain that the references are silent on the use of such information.

In the Office Action, it is noted that Deaton describes the targeting of promotional effort based on a consumer's consumption rate. (Col. 70, lines 4-24; Col. 118, lines 52-65.) The described consumption rate in Deaton corresponds to how much of a product a consumer or household consumes per unit time. Deaton's consumption rate, however, does not encompass or suggest the breadth of expiration information explicitly defined by Applicants' invention. (See, e.g., Specification, p. 11, line 16 – p. 12, line 6.) As expressly defined by Applicants' invention, product expiration information includes the "estimated useful life" of a product. Product expiration, though it can include a product's sell-by date, further includes information that corresponds to a product's life cycle. As defined, a product's life cycle can be derived not only from the time at which a product can be expected to wear out, but the time at which the product becomes obsolete or otherwise undesirable.

Fashion-related products, for example, may not require that they be sold by a certain date, but when account is taken of the fact that many consumers may not wish to wear last season's fashion, this fact indeed gives rise to product expiration information. (See, e.g., Specification p. 12, lines 2-5.) Software products, similarly, may not become perishable by a certain sell-by date, but they do can have an expiration date due to advances in competing software or complimentary hardware. Accordingly, even if it is inferred that Deaton's consumption rate can be combined with Gardenswartz to provide a basis for identifying perishable products that need to be sold by a given date, this does not teach or suggest the nature of the product expiration information as recited in Claims

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7 and 22. Applicants thus respectfully maintain that the combination of Gardenswartz and Deaton fail to teach or suggest this feature, and, therefore, Claims 7 and 22 define over the prior art.

Claims 6 and 21

Claims 6 and 21 recite that a merchant specified-product be a merchant-provided service. In the portion cited in the Office Action, Gardenswartz describes promoting consumption through the offer of value contracts, as described above. (Col. 14, lines 50-67.) Regardless of whether it can be inferred that the consumption of products according to Gardenswartz encompasses services as well, it remains that Gardenswartz is silent as to other features of Applicants' invention, such as a merchant computer system linked during a communications session to a third-party shopping stimulation system, a merchant request to stimulate commerce, a responsive reading of consumer purchase information from the merchant computer system, or any of the other recited features of the base claims. Applicants, therefore, respectfully maintain that this feature is not taught or suggested by either Gardenswartz or Deaton, and that Claims 6 and 21 define over the prior art.

Claims 8 and 23, 9 and 24

Claims 8 and 23 each recite that promotional material can be made available to identified consumers in an electronic format. Claims 9 and 24 recite that such material can be made in a printed format. Again, regardless of what Gardenswartz or Deaton discloses regarding promotional material in either format, it remains that both are silent as to such features as a merchant computer system linked during a communications session to a third-party shopping stimulation system, a merchant request to stimulate commerce, a responsive reading of consumer purchase information from the merchant computer system, or any of the other recited features of the base claims. Applicants, thus

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again, respectfully maintain that these features are not taught or suggested by either Gardenswartz or Deaton, and that Claims 8 and 23, as well as Claims 9 and 24, likewise define over the prior art.

CONCLUSION

The Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. The Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

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Respectfully submitted,



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